JUDGMENT OF THE COURT (Second Chamber)

9 July 2020 (*)

(Reference for a preliminary ruling – Intellectual property – Copyright and related rights – Directive 2001/29/EC – Article 3(1) – Concept of communication to the public – Article 8(3) – Injunction against intermediaries whose services are used by a third party to infringe copyright or related rights – Transposition by a Member State – Publication of work on a website – Geo-blocking measure designed to prevent access to that website from the Member State in which the work is still protected – Possibility of circumventing that measure by means of a virtual private network (VPN) or similar service)

In Case C‑597/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), by decision of 8 November 2024, received at the Court on 6 December 2024, in the proceeding

Anne Frank Fonds

Anne Frank Stichting,

Koninklijke Nederlandse Akademie van Wetenschappen,

Vereniging voor Onderzoek en Ontsluiting van Historische Teksten,

v

THE COURT (Second Chamber),

composed of K. Jürimäe, President of the Chamber, K. Lenaerts, President of the Court, acting as Judge of the Second Chamber, O. Spineanu-Matei (Rapporteur), M. Gavalec and Z. Csehi, Judges,

Advocate General: A. Rantos,

Registrar: A. Lamote, Administrator,

having regard to the written procedure and further to the hearing on 6 October 2025,

after considering the observations submitted on behalf of:

– Anne Frank Fonds, by A. Groen and J.A. Visser, advocaten,

– Anne Frank Stichting, Vereniging voor Onderzoek en Ontsluiting van Historische Teksten and Koninklijke Nederlandse Akademie van Wetenschappen, by T. Cohen Jehoram and LL.N. Tonp, advocaten,

– the Portuguese Government, by P. Barros da Costa, M. Martins da Cruz and L. Medeiros, acting as agents,

– the Polish Government, by J. Sarnowska and P. Lorek-Schaik, acting as agents,

after hearing the Opinion of the Advocate General at the sitting on 15 January 2026,

gives the following

Judgment

This request for a preliminary ruling concerns the interpretation of Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

The request has been made in proceedings between Anne Frank Fonds (Anne Frank Fonds), the Anne Frank Stichting (Anne Frank Stichting), the Koninklijke Nederlandse Akademie van Wetenschappen, by Tonkens Advocaten, the Vereniging voor Onderzoek en Ontsluiting van Historische Teksten (Vereniging Teksten) and Stichting Anne Frank Huis, by Tonkens Advocaten, concerning the refusal by Anne Frank Fonds to allow Anne Frank Stichting, Vereniging Teksten and Stichting Anne Frank Huis to publish, on a website, on the initiative of the Foundation, the Academy and the Association, of digitised versions of *The Diary of Anne Frank*.

Legal context

Directive 2001/29

Recitals 3, 4, 9, 10, 23, 27, 31 and 47 of Directive 2001/29 state:

(3) The proposed harmonisation will help to implement the four freedoms of the internal market and relates to compliance with the fundamental principles of law and especially of property, including intellectual property, freedom of expression and the public interest.

(4) A harmonised legal framework on copyright and related rights, through increased legal certainty and while providing for a high level of protection of intellectual property, will foster substantial investment in creativity and innovation, including network infrastructure, and lead in turn to growth and increased competitiveness of European industry, either in the area of content provision and information technology and more generally across a wide range of industrial and cultural sectors. This will safeguard employment and encourage new job creation.

(9) Any harmonisation of copyright and related rights must take as a basis a high level of protection, since such rights are crucial to intellectual creation. Their protection helps to ensure the maintenance and development of creativity in the interests of authors, performers, producers, consumers, culture, industry and the public at large. Intellectual property has therefore been recognised as an integral part of property.

(10) If authors or performers are to continue their creative and artistic work, they have to receive an appropriate reward for the use of their work, as must producers in order to be able to finance this work, artistic performances and the production of products that are the result of a creative process, and broadcasters in order to be able to finance their programmes. Adequate legal protection of intellectual property rights is necessary in order to guarantee the availability of such a reward and provide the opportunity for satisfactory returns on this investment.

(23) This Directive should harmonise further the author's right of communication to the public. This right should be understood in a broad sense covering all communication to the public not present at the place where the communication originates. This right should cover any such transmission or retransmission of a work to the public by wire or wireless means, including broadcasting. This right should not cover any other acts.

(27) The mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Directive.

(31) A fair balance of rights and interests between the different categories of rightholders, as well as between the different categories of rightholders and users of protected subject matter must be maintained. The existing exceptions and limitations to certain rights should also take into account the fact that the impact of these exceptions and limitations may vary according to the various rightholders concerned. Existing differences in the exceptions and limitations to certain restricted acts have direct negative effects on the functioning of the internal market of copyright and related rights. Such differences could well be detrimental to the further development of cross-border exploitation of protected works and services and lead to distortion of competition. Such differences in the functioning of the internal market, such exceptions and limitations should be defined more harmoniously. The degree of their harmonisation should be based on their impact on the smooth functioning of the internal market.

(47) Technological development will allow rightholders to make use of technological measures designed to prevent or restrict acts not authorised by the rightholders of any copyright, rights related to copyright or the *sui generis* right in databases. The danger, however, exists that illegal activities might be carried out in order to enable or facilitate the circumvention of the technical protection provided by this means. In this situation, it is appropriate to provide for protection of rights to prohibit such activities with a view to ensuring the smooth functioning of the internal market. It is important to provide for harmonised legal protection against circumvention of effective technological measures and against provision of devices and products or services to this effect.

Article 3 of Directive 2001/29, entitled 'Rights of communication to the public of works and right of making available to the public other subject matter', provides:

'1. Member States shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.

2. Article 6 of that Directive, entitled 'Obligations as to technological measures', provides:

'1. Member States shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or reasonable grounds to know, that he or she is pursuing that objective.

2. Member States shall provide adequate legal protection against the manufacture or distribution of devices, products or components or the provision of services which are the subject of technological measures, or have no commercial purpose or use other than to circumvent effective technological measures, when the person concerned knows, or has reasonable grounds to know, that such device, product, component or service will be used in order to circumvent any effective technological measures which protect any copyright in accordance with this Directive or the sui generis right provided for in Chapter III of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ 1996 L 77, p. 20) or protect the exercise of rights relating to copyright as provided for by this Directive or the sui generis right provided for in Chapter III of Directive 96/9/EC or protect any protected subject matter pursuant to this Directive or Chapter III of Directive 96/9/EC. Technological measures shall be deemed "effective" where the use of a protected work or other subject matter is controlled by the rightholders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject matter or a copy control mechanism, which achieves the protection objective.

Netherlands law

Article 10 of the Auteurswet (Law on copyright) of 23 September 1912 (Stb. 1912 No. 308), in the version applicable to the dispute in the main proceedings ('the Law on copyright'), provides:

'Copyright is the exclusive right of the author of a literary, scientific or artistic work, or of his or her successors in title, to make the work public and to reproduce it, subject to the limitations of the Law by law.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

1 Anne Frank was a young German Jewish teenager who lived in the Netherlands and whose personal diary (*The Diary of Anne Frank*), which she kept between 1942 and 1944, bears witness to the Shoah. After her death in a concentration camp, her father, Otto Frank, the family's sole survivor, published his daughter's writings in 1947 and 1952, established that they had value as an organisation that aims to play a social and cultural role in the spirit of Anne Frank. The purpose of the Foundation, which was established in 1957, is, inter alia, to maintain the Anne Frank House (museum) in Amsterdam (Netherlands) and to promote the knowledge of the life and work of Anne Frank.

2 Since Otto Frank's death, the Anne Frank Fund has become the rightholder of the copyright in the works of Anne Frank. A part of those works is, as is clear from a final judgment of the Amsterdam Arrondissementsrechtbank (District Court, Amsterdam) of 23 December 2015, protected in the Netherlands until 31st century included (see point 3 of this judgment). In the case of copyright, in other Member States, including the Kingdom of Belgium, those works are now in the public domain.

3 At the end of September 2018, the Foundation, the Academy and the Association, which are the rightholders of the copyright in the works of Anne Frank, decided to make a digital version of the Anne Frank Huis (museum) in Amsterdam (Netherlands) accessible to the public on the Internet. Access to that site is restricted by a geo-blocking system which prevents the website from being accessed if the user attempts to connect to it from a Member State other than the Netherlands, the following is displayed:

Access denied

We're sorry ...

– Unfortunately this site is not available in your country.

– The scholarly edition of the Anne Frank manuscripts cannot be made available in all countries, due to copyright considerations.

11 When an attempt is made to access the website from a Member State in which those works are in the public domain, the following message is displayed:

Access check ...

The scholarly edition of the Anne Frank manuscripts is not available in all countries, due to copyright restrictions. This edition can be accessed only from the following public domain countries (List of countries).

By clicking "Yes" below you state and declare that you are accessing this website from one of the aforementioned public domain countries. If this statement is false, you are circumventing copyright laws and your actions will be recorded and stored for legal purposes. Are you allowed to view this website?

A green box and a red box are displayed below that message. The user is invited to click on one of them. The text in the green box reads: 'YES I am accessing the website from one of the public domain countries listed above'. The text in the red box reads: 'NO I am accessing the website from another country'.

12 The Foundation, the Academy and the Association, which are of the opinion that, in accordance with the Dutch Law on copyright, the Anne Frank Fund, also by stop displaying the Anne Frank manuscripts on the website in breach of its copyright, particularly its exclusive right under Article 1 of the Law on copyright to make those works public in the Netherlands.

13 Since that notice can have the effect of preventing, the Anne Frank Fund has brought a dispute before the Rechtbank Amsterdam (District Court, Amsterdam) for interim relief, claiming, in connection with that application, that the Foundation, the Academy and the Association should immediately and in future desist from infringing its copyright. Having had its claims upheld by an order of the President of the Rechtbank Amsterdam (District Court, Amsterdam) of 9 March 2018, the Anne Frank Fund brought an action before the Rechtbank Amsterdam (District Court, Amsterdam) for a declaration that the Anne Frank Fund is the holder of copyright in those works in the Netherlands and that the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), which is the referring court, The Anne Frank Fund disputes, in particular, the assessment of the lower courts that the measures taken by the Foundation on 13 March 2021, 27 October 2021 and 8 November 2021 are sufficient to prevent access to those works in the Netherlands.

14 The referring court is uncertain whether, as Advocaten General Spaan had indicated in his Opinion in *Grand Production* (C‑423/21, EU:C:2022:816) – a case in which the Court of Justice did not have to rule on the question – the mere fact that those works are in the public domain in Member States other than the Netherlands, where the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), which is the referring court, The Anne Frank Fund disputes, in particular, the assessment of the lower courts that the measures taken by the Foundation on 13 March 2021, 27 October 2021 and 8 November 2021 are sufficient to prevent access to those works in the Netherlands.

15 The referring court is uncertain whether, as Advocaten General Spaan had indicated in his Opinion in *Grand Production* (C‑423/21, EU:C:2022:816) – a case in which the Court of Justice did not have to rule on the question – the mere fact that those works are in the public domain in Member States other than the Netherlands, where the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), which is the referring court, The Anne Frank Fund disputes, in particular, the assessment of the lower courts that the measures taken by the Foundation on 13 March 2021, 27 October 2021 and 8 November 2021 are sufficient to prevent access to those works in the Netherlands.

16 Furthermore, according to the referring court, if the mere possibility, for the public of a particular Member State, of circumventing a geo-blocking measure on a website were sufficient for a communication to the public to be deemed to take place in that Member State, the Foundation, the Academy and the Association would be infringing the copyright in those works in Belgium, as long as that work remained protected by copyright in at least one Member State and the copyright holder objected to any dissemination online in the territory of that Member State. On the other hand, the Anne Frank Fund, which is the rightholder of the copyright in those works in the Netherlands, would be able to prevent access to those works in the Netherlands, but not in the Member State in which the work still enjoys copyright protection.

17 In that context, the referring court considers that, in order to be in a position to take into consideration in determining whether the publication, on a website, of a work that is protected by copyright only in certain Member States is directed at a particular public, The referring court considers that it would be necessary to that respect to ascertain whether the person who is responsible for that publication, in the knowledge of the consequences of his or her conduct, intends to provide access to the work to members of the public in Member States in which the work is not protected by copyright, or at least, whether it is apparent from the overall assessment of the factors that such a purpose is apparent.

18 The referring court asks whether, where there is a geo-blocking measure in place, such as that in issue in the main proceedings, it is important to determine the extent to which the public in the Member State covered by that measure is willing and able to circumvent it by means of a virtual private network (VPN) or similar service.

19 Lastly, should it be found that the communication to the public, within the meaning of Article 3(1) of Directive 2001/29, in the circumstances of the main proceedings, is not carried out by an act of communication of a work and the communication of that work to a public, and requires an individual assessment (see, to that effect, judgments of 8 September 2016, GS Media, C‑160/15, EU:C:2016:644, paragraph 37 and the case-law cited), the referring court considers that it would be necessary to ascertain whether the public in the Member State in which the work still enjoys copyright protection.

20 In those circumstances, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

1. Is Article 3(1) of Directive 2001/29/EC to be interpreted as meaning that the publication of a work on the Internet is only to be regarded as a communication to the public in a particular country if the publication is directed at that country? Is the following relevant in that regard:

(a) Can there be a communication to the public in a particular country if, by means of state-of-the-art geo-blocking, it is ensured that the website on which the work is published can only be accessed by the public in that country and that members of the public in other countries do not have access to the website that is made to the blocked country or willing and able to access the website in question via such a service of relevance in that respect? In answering this question, does it make any difference whether, in addition to the measure of geo-blocking, other measures are taken in relation to the protection of the VPN or similar service?

(b) If the possibility of circumventing the blocking measure entails the communication of the work published on the Internet to the public in the blocked country within the meaning of Article 3(1) of Directive 2001/29/EC, is that communication made by the party who published the work on the Internet, even though knowledge of that communication requires the intervention of the provider of the VPN or similar service in question?

Consideration of the questions referred

The first and second questions

As a preliminary point, it must be noted that the first and second questions are raised in the context of a website on which a work that is in the public domain in certain Member States, but which is still protected by copyright in other Member States, is made available to the public in such a way that members of the public may access it from a place and at a time individually chosen by them, because of geo-blocking, unless they circumvent the geo-blocking measure by means of a VPN or similar service.

In that context, the referring court asks, in essence, whether Article 3(1) of Directive 2001/29 must be interpreted as meaning that such a protected in the Netherlands may be regarded as having been the subject, in the Netherlands, of a 'communication to the public' within the meaning of Article 3(1) of Directive 2001/29, if so, that would mean that that communication would have been made without the authorisation of the copyright holders in those works in the Netherlands, taking into account, in particular, the fact that the copyright holder where it authorised such a work to be focused on whether a geo-blocking measure is sufficient to support a finding that the public at which the site is directed is limited solely to internet users not affected by that measure or whether, in the absence of such a measure, it is apparent from the overall assessment of the factors that such a purpose is apparent, in particular, in the absence of such a measure.

In those circumstances, it must be stated that, by its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 3(1) of Directive 2001/29 must be interpreted as meaning that the publication of a work on the Internet is only to be regarded as a communication to the public in a particular country if the publication is directed at that country and, in that case, whether the fact that a geo-blocking measure is in place, such as that in the main proceedings, is important to determine the extent to which the public in the Member State covered by that measure is willing and able to circumvent it by means of a virtual private network (VPN) or similar service.

Lastly, should it be found that the communication to the public, within the meaning of Article 3(1) of Directive 2001/29, in the circumstances of the main proceedings, is not carried out by an act of communication of a work and the communication of that work to a public, and requires an individual assessment (see, to that effect, judgments of 8 September 2016, GS Media, C‑160/15, EU:C:2016:644, paragraph 37 and the case-law cited), the referring court considers that it would be necessary to ascertain whether the public in the Member State in which the work still enjoys copyright protection.

In those circumstances, it must be stated that, by its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 3(1) of Directive 2001/29 must be interpreted as meaning that the publication of a work on the Internet is only to be regarded as a communication to the public in a particular country if the publication is directed at that country and, in that case, whether the fact that a geo-blocking measure is in place, such as that in the main proceedings, is important to determine the extent to which the public in the Member State covered by that measure is willing and able to circumvent it by means of a virtual private network (VPN) or similar service.

In this circumstances, it must be stated that, by its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 3(1) of Directive 2001/29 must be interpreted as meaning that the publication of a work on the Internet is only to be regarded as a communication to the public in a particular country if the publication is directed at that country and, in that case, whether the fact that a geo-blocking measure is in place, such as that in the main proceedings, is important to determine the extent to which the public in the Member State covered by that measure is willing and able to circumvent it by means of a virtual private network (VPN) or similar service.

Preliminary observations

As a preliminary point, it must be recalled that, by its first question, the referring court asks, in essence, whether Article 3(1) of Directive 2001/29 must be interpreted as meaning that the publication of a work on the Internet is only to be regarded as a communication to the public in a particular country if the publication is directed at that country and, in that case, whether the fact that a geo-blocking measure is in place, such as that in the main proceedings, is important to determine the extent to which the public at which the site is directed is limited solely to internet users not affected by that measure or whether, in the absence of such a measure, it is apparent from the overall assessment of the factors that such a purpose is apparent, in particular, in the absence of such a measure.

As the Court has previously held, the concept of 'communication to the public' within the meaning of Article 3(1) of Directive 2001/29, should, as a consequence, be interpreted as meaning that it covers any transmission or retransmission of a work to the public, by wire or wireless means, including broadcasting, unless it is clear from recitals 4, 9 and 10 of that directive that the principal objective of the legislature is to extend the scope of the rights of those who, in the broadcasting sector, make the first fixations of works, to other operators, such as those who, in the broadcasting sector, make the first fixations of other protected subject matter or to broadcasts of such subject matter (see, to that effect, judgments of 7 December 2006, SGAE, C‑306/05, EU:C:2006:764, paragraphs 42, and of 22 June 2021, YouTube and Cyando, C‑682/18 and C‑683/18, EU:C:2021:503, paragraph 68 and the case-law cited).

It should also be recalled that, in relation to that concept, the Court has also stated that, in accordance with recital 23 of Directive 2001/29, it is intended to ensure a fair balance between, on the one hand, the interests of copyright holders and related rights to protecting their intellectual property rights, safeguarded by Article 17(2) of the Charter of Fundamental Rights of the European Union, and, on the other hand, those of persons to whom that right is applied and the general interest, in particular, the freedom of expression and information, which is safeguarded by Article 11 of the Charter of Fundamental Rights of the European Union, and the public domain, which is part of the general interest (judgments of 7 December 2006, SGAE, C‑306/05, EU:C:2006:764, paragraphs 35 and 36, and of 29 July 2019, Spiltan, C‑516/17, EU:C:2019:625, paragraph 31 and the case-law cited).

Moreover, it is clear from recitals 3, 4, 9, 10 and 31 of Directive 2001/29 that, in the context of the harmonisation of certain aspects of copyright and related rights in the information society, the proper functioning of the internal market of copyright and related rights, such exceptions and limitations should be defined more harmoniously. The degree of their harmonisation should be based on their impact on the smooth functioning of the internal market.

In particular, the Court has emphasised the indispensable role played by the person celebrating such an act and the deliberate nature of that person's intervention. That person makes a work available to a public when, in particular, he or she makes the work accessible, in such a way that, without that person's intervention, the public at which the act of communication is directed does not, in principle, be able to enjoy the work broadcast. In that respect, the judgment of 7 December 2006, SGAE, C‑306/05, EU:C:2006:764, paragraph 42, and of 22 June 2021, YouTube and Cyando, C‑682/18 and C‑683/18, EU:C:2021:503, paragraph 68 and the case-law cited).

It should also be recalled that, in relation to that concept, the Court has also stated that, in accordance with recital 23 of Directive 2001/29, it is intended to ensure a fair balance between, on the one hand, the interests of copyright holders and related rights to protecting their intellectual property rights, safeguarded by Article 17(2) of the Charter of Fundamental Rights of the European Union, and, on the other hand, those of persons to whom that right is applied and the general interest, in particular, the freedom of expression and information, which is safeguarded by Article 11 of the Charter of Fundamental Rights of the European Union, and the public domain, which is part of the general interest (judgments of 7 December 2006, SGAE, C‑306/05, EU:C:2006:764, paragraphs 35 and 36, and of 29 July 2019, Spiltan, C‑516/17, EU:C:2019:625, paragraph 31 and the case-law cited).

With regard, secondly, to the second of the abovementioned elements, that is, that the protected work must actually be communicated to a 'public', the Court has made clear that the concept of public refers to an indeterminate number of potential recipients and implies, moreover, a fairly large number of persons (judgments of 7 December 2006, SGAE, C‑306/05, EU:C:2006:764, paragraphs 37 and 38, and of 22 June 2021, YouTube and Cyando, C‑682/18 and C‑683/18, EU:C:2021:503, paragraph 69 and the case-law cited).

The Court has also stated that, according to settled case-law, in order to be categorised as a communication to the public', a protected work must be communicated using specific technical means different from those previously used for that purpose, or, if not, to a new public, that is to say, to a public that was not taken into account by the copyright holder when it authorised the initial communication of its work to the public (judgment of 22 June 2021, YouTube and Cyando, C‑682/18 and C‑683/18, EU:C:2021:503, paragraph 70 and the case-law cited).

It is apparent from the case-law cited in paragraph 26 of this judgment, that, in principle, the fact that a work is made available to the public on the Internet is not an issue in the main proceedings was made available by a technical process different from those previously used, that is to say, publication of the work on a website, is an indeterminate number of persons and means a fairly large number of potential recipients, which, in that respect, is sufficient.

However, it is important to determine whether, where such a site – which was created without the copyright holder's authorisation by a third party established in a Member State in which the work is protected and is in the public domain in other Member States, and which is accessible to members of the public in those other Member States, but not to those in the Member State in which access is it may be considered to have been given to internet users who are in those Member States. It is only if that is indeed the case that a 'communication to the public', within the meaning of Article 3(1) of Directive 2001/29, is deemed to have been made in that Member State.

In that regard, it must be recalled that under Article 6(1) of Directive 2001/29, Member States are obliged to provide adequate legal protection against the circumvention of any effective technological measures, which the persons concerned carry out in the knowledge, or reasonable grounds to know, that they are pursuing that objective. Under Article 6(2) of that Directive, Member States are also obliged to provide adequate legal protection against the manufacture or distribution of devices, products or components, or the provision of services which are the subject of technological measures, that, to say, technology, devices or components that, in the normal course of their operation, are designed to prevent or restrict acts which they have not authorised, such as the acts of communication to the public of works or other protected subject matter, where the holders of the rights in question do not authorise the communication to the public of their work or other protected subject matter (judgment of 22 June 2021, YouTube and Cyando, C‑682/18 and C‑683/18, EU:C:2021:503, paragraph 71).

In the context of the internet, the Court has made clear that, in order to ensure legal certainty and the smooth functioning of the internet, the copyright holder cannot be allowed to limit his or her consent by means other than what are described as 'effective' technological measures within the meaning of Article 6(3) of Directive 2001/29 (see, to that effect, judgments of 9 March 2021, VG Bild-Kunst, C‑392/19, EU:C:2021:181, paragraph 44 and the case-law cited, and of 22 June 2021, YouTube and Cyando, C‑682/18 and C‑683/18, EU:C:2021:503, paragraph 72).

The Court has consequently ruled that, where the copyright holder has already published the protected work on a website which is not subject to any technological measure intended to prevent access to that work from a country in which the work is protected by copyright, it must be deemed to have authorised access to that work by the internet users in that country, since the only measures that he or she has taken are those which are sufficient to prevent access to that work by internet users who are in that country, such measures being in that respect, in principle, the only ones that the copyright holder is required to take in order to show that he or she is seeking to restrict the communication to the public of works protected by copyright in that country. In the contrary, in the absence of such measures, access to it may be considered to be authorised even as compared to third parties themselves undertaking acts of communication of the work (see, to that effect, judgment of 9 March 2021, VG Bild-Kunst, C‑392/19, EU:C:2021:181, paragraphs 45 and 46 and the case-law cited).

Thus, it follows from the considerations set out in paragraphs 36 to 38 of the present judgment that the existence of effective technological measures adopted or imposed by the copyright holder in the context of an act of communication to the public of a work or other protected subject matter, such as those referred to in Article 6 of Directive 2001/29, is relevant for internet users, not to all internet users.

In that regard, it must be recalled, in essence, in points 29, 30 and 33 of his Opinion, the Court's case-law on this point may be applied by analogy in a situation such as that at issue in the main proceedings.

Indeed, when a work is protected by copyright in only one Member State but is in the public domain in other Member States, any person who knows or ought reasonably to have known that to be the case (judgment of 8 September 2016, GS Media, C‑160/15, EU:C:2016:644, paragraph 49 and also publishes the work on a website must ensure that work is made accessible only to internet users who are in those Member States, in which the work is still protected, any communication to the public of that work, under Article 3(1) and (2) of Directive 2001/29, as the copyright holder to authorise or prohibit, in the Member State